



#8

PATENT
29250-002070/US

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant(s): Joseph Gerard AGUILAR et al. Group No.: 2655
Application No.: 09/159,481 Conf. No.:
Filed: September 23, 1998 Examiner: Michael N. Opsasnick
For: SCALABLE AND EMBEDDED CODEC FOR SPEECH AND AUDIO
SIGNALS

**PETITION TO REVIVE AN UNINTENTIONALLY ABANDONED
APPLICATION UNDER 37 C.F.R. §1.137(b)**

U.S. Patent and Trademark Office
220 20th Street S.
Customer Window – Mail Stop PETITION
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

December 29, 2004

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JAN 04 2005
OFFICE OF PETITIONS

Sir:

The above-identified application was unintentionally abandoned for failure to timely file a response to the Office Action dated June 25, 2003. The entire delay in filing the required reply, namely the response to the Office Action, from the due date for the reply until the filing of this petition under 37 CFR 1.137(b) was unintentional. Thus, the abandonment was unintentional.

Since this utility application was filed on or after June 8, 1995, no terminal disclaimer is required.

01/03/2005 MBELETE1 00000022 09159481

02 FC:1453

1500.00 DP

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

1. Petition Fee

_____ Small Entity - fee \$_____ (37 CFR 1.17(m))

_____ Small Entity Statement enclosed herewith.

_____ Small Entity Statement previously filed.

X Other than Small Entity - fee \$1,500.00 (37 C.F.R. 1.17(m))

2. Reply and/or Fee

A. The filing fee (no reply is necessary) of \$_____:

_____ has been filed previously on _____

X is enclosed herewith (Response to Non-Final Office Action).

B. The issue fee of \$_____

_____ has been paid previously on _____.

_____ is enclosed herewith.

3. Terminal Disclaimer with disclaimer fee

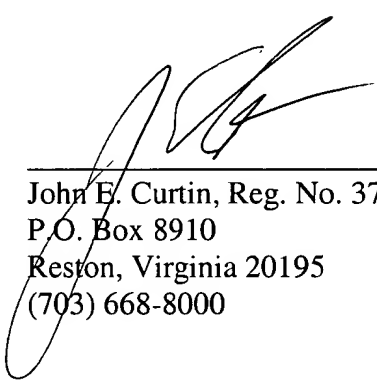
X Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

___ A Terminal Disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$_____ for a small entity or _____ for other than a small entity) equivalent to the number of months from abandonment to the filing of this petition.

4. Statement. The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

December 29, 2004
Date



John E. Curtin, Reg. No. 37,602
P.O. Box 8910
Reston, Virginia 20195
(703) 668-8000

Enclosures: Copy of Notice of Abandonment
Fee Payment
Response to Non-Final Office Action



Notice of Abandonment

Application No.	Applicant(s)	
09/159,481	AGUILAR ET AL.	
Examiner	Art Unit	
Michael N. Opsasnick	2655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 25 June 2003.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

Applicant's representative, Mr. Hodulik, confirmed that the office action was not received, and hence, a response was not filed. Mr. Hodulik also agreed to the notice of abandonment, with the applicant's intention to file follow-up paperwork as deemed necessary.

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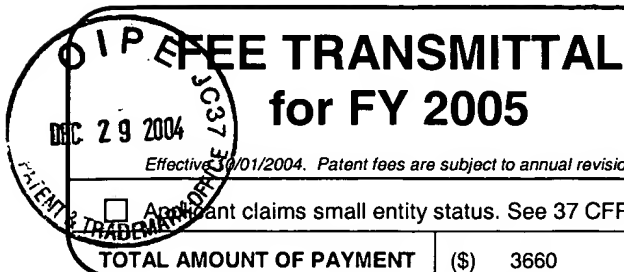
OFFICE OF PETITIONS

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

U.S. Patent and Trademark Office
PTOL-1432 (Rev. 04-01)

Notice of Abandonment

Part of Paper No. 7



☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 3660

Complete if Known

Application Number 09/159,481
Filing Date September 23, 1998
First Named Inventor Joseph Gerard AGUILAR
Examiner Name Michael N. Opsasnick
Art Unit 2655
Attorney Docket No. 29250-002070/US

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METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit card ☐ Money ☐ Other ☐ None
Order

☐ Deposit Account:

Deposit Account Number 08-0750

Deposit Account Name Harness, Dickey & Pierce, PLC

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Credit any overpayments
☐ Charge any additional fee(s) during the pendency of this application
☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1011	300	2011	150	Utility filing fee	
1012	200	2012	100	Design filing fee	
1013	200	2013	100	Plant filing fee	
1014	300	2014	150	Reissue filing fee	
1005	200	2005	100	Provisional filing fee	

SUBTOTAL (1) (\$) 0

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

			Extra Claims		Fee from below		Fee Paid	
Total Claims	<input type="text"/>	-20 **	=	<input type="text" value="0"/>	X	<input type="text"/>	=	<input type="text" value="0"/>
Independent Claims	<input type="text"/>	-3 **	=	<input type="text" value="0"/>	X	<input type="text"/>	=	<input type="text" value="0"/>
Multiple Dependent						<input type="text"/>	=	<input type="text" value="0"/>

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	50	2202	25	Claims in excess of 20
1201	200	2201	100	Independent claims in excess of 3
1203	360	2203	180	Multiple dependent claim, if not paid
1204	200	2204	100	** Reissue independent claims over original patent
1205	50	2205	25	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$) 0

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	120	2251	60	Extension for reply within first month	
1252	450	2252	225	Extension for reply within second month	
1253	1020	2253	510	Extension for reply within third month	
1254	1,590	2254	795	Extension for reply within fourth month	
1255	2,160	2255	1080	Extension for reply within fifth month	2160
1401	500	2401	250	Notice of Appeal	
1402	500	2402	250	Filing a brief in support of an appeal	
1403	1000	2403	500	Request for oral hearing	
1452	500	2452	250	Petition to revive - unavoidable	
1453	1500	2453	750	Petition to revive - unintentional	1500
1501	1400	2501	700	Utility issue fee (or reissue)	
1502	800	2502	400	Design issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17 (q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR § 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid SUBTOTAL (3) (\$)3660

4. SEARCH/EXAMINATION FEES

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description
1111	500	2111	250	Utility Search Fee
1112	100	2112	50	Design Search Fee
1113	300	2113	150	Plant Search Fee
1114	500	2114	250	Reissue Search Fee
1311	200	2311	100	Utility Examination Fee
1312	130	2312	65	Design Examination Fee
1313	160	2313	80	Plant Examination Fee
1314	600	2314	300	Reissue Examination Fee

SUBTOTAL (4) (\$)0

SUBMITTED BY

Name (Print/Type) John E. Curtin Registration No. (Attorney/Agent) 37,602 Telephone (703) 668-8000
Signature Date December 29, 2004

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.



PATENT

ATTORNEY DOCKET NO. 29250-002070/US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Joseph Gerard AGUILAR et al. CONF. NO.:
SERIAL NO.: 09/159,481 GROUP: 2655
FILED: September 23, 1998 EXAMINER: Michael N. Opsasnick
FOR: SCALABLE AND EMBEDDED CODEC FOR SPEECH AND AUDIO
SIGNALS

**REVOCATION OF POWER OF ATTORNEY, SUBSTITUTE POWER OF ATTORNEY, AND
CHANGE IN CORRESPONDENCE ADDRESS**

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Dear Sir:

OFFICE OF PETITIONS

The undersigned, being Assignee of record of the entire interest in the above-identified application by virtue of an assignment recorded in the United States Patent and Trademark Office as set forth below, hereby elects, under 37 C.F.R. §3.71, to prosecute the application to the exclusion of the inventors. The Assignee hereby revokes any previous Powers of Attorney and appoints the firm of Harness, Dickey & Pierce, P.L.C. and Lucent Technologies as the attorneys of the Assignee to receive all correspondence relating to the above-identified application or patent and to transact all business in the United States Patent and Trademark Office connected therewith, with full power of substitution and revocation, and the Assignee ratifies any act done by the Assignee's attorneys in respect of this patent. The new correspondence address is:

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 8910
Reston, VA 20195

Customer Number 30594

U.S. Serial No. 09/159,481

The undersigned (whose title is supplied below) is empowered to sign this Revocation and Substitute Power of Attorney on behalf of the Assignee.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

12/20/04

Date

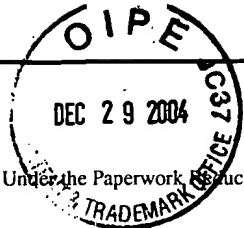


Matthew J. Hodulik
Corporate Counsel

ASSIGNMENT:

☐
☐

Concurrently filed
Previously recorded



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

STATEMENT UNDER 37 CFR 3.73(b)Applicant/Patent Owner: Lucent Technologies Inc.Application No./Patent No.: 09/159,481 Filed/Issued Date: September 23, 1998

Entitled: _____

Lucent Technologies Inc., corporation

(Name of Assignee)

(Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title and interest.
The extent (by, percentage) of its ownership interest is _____%

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In the patent application/patent identified above by virtue of either:

OFFICE OF PETITIONS

A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel_____, Frame_____, or for which a copy thereof is attached.

OR

B. ☒ A Chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

1. From Joseph Gerard AGUILAR et al. To: Voxware, Inc. (acquired by Ascend Communications ("Ascend"))

The document was recorded in the United States Patent and Trademark Office at

Reel 9765, Frame 0798, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

☒ Copies of assignments or other documents in the chain of title are attached. (Merger of Ascend and Lucent Technologies Inc.)

[Note: A separate copy (i.e., the original assignment document or a true copy of the original document) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

December 29, 2004

Date

John E. Curtin

Typed or printed name

Signature

Attorney of Record

Title

AGREEMENT AND PLAN OF MERGER

Dated as of January 12, 1999

By and Among

LUCENT TECHNOLOGIES INC.,

DASHER MERGER INC.

And

ASCEND COMMUNICATIONS, INC.

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JAN 04 2005

OFFICE OF PETITIONS

AGREEMENT AND PLAN OF MERGER (this "Agreement") dated as of January 12, 1999, among LUCENT TECHNOLOGIES INC., a Delaware corporation ("Lucent"), DASHER MERGER INC., a Delaware corporation and a wholly owned subsidiary of Lucent ("Sub"), and ASCEND COMMUNICATIONS, INC., a Delaware corporation ("Ascend").

WHEREAS the respective Boards of Directors of Lucent, Sub and Ascend have approved and declared advisable this Agreement and the merger of Sub with and into Ascend (the "Merger"), upon the terms and subject to the conditions set forth in this Agreement, whereby each issued and outstanding share of common stock, par value \$.001 per share, of Ascend ("Ascend Common Stock"), other than shares owned by Lucent, Sub or Ascend, will be converted into the right to receive the Merger Consideration (as defined in Section 2.01(c));

WHEREAS the respective Boards of Directors of Lucent, Sub and Ascend have each determined that the Merger and the other transactions contemplated hereby are consistent with, and in furtherance of, their respective business strategies and goals;

WHEREAS Lucent, Sub and Ascend desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger;

WHEREAS, for U.S. federal income tax purposes, it is intended that the Merger will qualify as a reorganization under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code") and that this Agreement constitutes a plan of reorganization;

WHEREAS, for financial accounting purposes, it is intended that the Merger will be accounted for as a pooling of interests transaction; and

WHEREAS, immediately following the execution and delivery of this Agreement, Ascend and Lucent will enter into a stock option agreement (the "Option Agreement"), pursuant to which Ascend will grant Lucent the option to purchase shares of Ascend Common Stock, upon the terms and subject to the conditions set forth therein.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained in this Agreement, the parties agree as follows:

ARTICLE I

The Merger

SECTION 1.01. The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Delaware General Corporation Law (the "DGCL"), Sub shall be merged with and into Ascend at the Effective Time (as defined in Section 1.03). Following the Effective Time, Ascend shall be the surviving corporation (the "Surviving Corporation") and shall succeed to and assume all the rights and obligations of Sub in accordance with the DGCL.

SECTION 1.02. Closing. The closing of the Merger (the "Closing") will take place at 10:00 a.m. on a date to be specified by the parties (the "Closing Date"), which shall be no later than the second business day after satisfaction or waiver of the conditions set forth in Article VI (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions), unless another time or date is agreed to by the parties hereto. The Closing will be held at such location in the City of New York as is agreed to by the parties hereto.

SECTION 1.03. Effective Time. Subject to the provisions of this Agreement, as soon as practicable on or after the Closing Date, the parties shall file a certificate of merger or other appropriate documents (in any such case, the "Certificate of Merger") executed in accordance with the relevant provisions of the DGCL and shall make all other filings or recordings required under the DGCL. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Delaware Secretary of State, or at such subsequent date or time as Lucent and Ascend shall agree and specify in the Certificate of Merger (the time the Merger becomes effective being hereinafter referred to as the "Effective Time").

SECTION 1.04. Effects of the Merger. The Merger shall have the effects set forth in Section 259 of the DGCL.

SECTION 1.05. Certificate of Incorporation and By-laws. (a) The certificate of incorporation of Ascend, as in effect immediately prior to the Effective Time, shall

be amended as set forth in Exhibit A hereto, and, as so amended, shall be the certificate of incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law.

(b) The by-laws of Sub, as in effect immediately prior to the Effective Time, shall be the by-laws of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law.

SECTION 1.06. Board of Directors and Officers.

(a) The directors of Sub immediately prior to the Effective Time shall be directors of the Surviving Corporation, until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

(b) The officers of Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation, until the earlier of their resignation or removal or their respective successors are duly elected and qualified, as the case may be.

ARTICLE II

Effect of the Merger on the Capital Stock of the Constituent Corporations; Exchange of Certificates

SECTION 2.01. Effect on Capital Stock. As of the Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares of Ascend Common Stock or any shares of capital stock of Sub:

(a) Capital Stock of Sub. Each issued and outstanding share of capital stock of Sub shall be converted into one share of common stock of the Surviving Corporation.

(b) Cancellation of Treasury Stock and Lucent-Owned Stock. Each share of Ascend Common Stock that is owned by Ascend, Sub or Lucent shall automatically be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(c) Conversion of Ascend Common Stock. Subject to Section 2.02(e), each issued and outstanding share of Ascend Common Stock (other than shares to be canceled in accordance with Section 2.01(b)) shall be converted into the right to receive 0.825 (the "Exchange Ratio") fully paid and nonassessable shares

IN WITNESS WHEREOF, Lucent, Sub and Ascend have caused this Agreement to be signed by their respective officers therunto duly authorized, all as of the date first written above.

LUCENT TECHNOLOGIES INC.,

by

Name:
Title:

DASHER MERGER INC.,

by

Name:
Title:

ASCEND COMMUNICATIONS, INC.,

by

Name: *Mary Ejabat*
Title: *President and Chief Executive Officer*

IN WITNESS WHEREOF, Lucent, Sub and Ascend have caused this Agreement to be signed by their respective officers therunto duly authorized, all as of the date first written above.

LUCENT TECHNOLOGIES INC.,

by

Richard A. Ginn

Name:

Title: CEO

DASHER MERGER INC.,

by

Pamela F. Craven

Name: PAMELA F. CRAVEN

Title: VICE PRESIDENT
AND TREASURER

ASCEND COMMUNICATIONS, INC.,

by

Name:

Title:

ASCEND DISCLOSURE SCHEDULE

This Ascend Disclosure Schedule qualifies Sections 3.01 and 4.01 of the Agreement and Plan of Merger (the "Agreement"), dated as of January 12, 1999, between Lucent Technologies Inc., a Delaware corporation ("Lucent"), Dasher Merger Inc., a Delaware corporation and a wholly owned subsidiary of Lucent, and Ascend Communications, Inc., a Delaware corporation ("Ascend"). The information disclosed in this Ascend Disclosure Schedule is arranged in section numbers corresponding to the section numbers contained in the Agreement. Capitalized terms used but not defined in this Ascend Disclosure Schedule shall have the respective meanings given such terms in the Agreement.

No reference to or disclosure of any item or other matter in this Ascend Disclosure Schedule shall be construed as an admission or indication that such item or other matter is material or that such item or other matter is required to be referred to or disclosed in this Ascend Disclosure Schedule. No disclosure in this Ascend Disclosure Schedule relating to any possible breach or violation of any agreement, law or regulation shall be construed as an admission or indication that any such breach or violation exists or has actually occurred.

Absence of Certain Changes or Events

- A. See Section 3.01(e) Items G, O and R.
- B. See Section 3.01(h) Item A.
- C. See Section 3.01(j) All Items.
- D. See Section 3.01(r) Items A-N.
- E. Ascend is currently in negotiations to acquire certain assets (primarily software) of Voxware.
- F. See Section 3.01(c) Items D, E and F.
- G. Ascend is in negotiations concerning the divestiture of three business units of Stratus. On January 7, 1999 Ascend entered into a definitive agreement for the sale of Stratus' "Enterprise Server" business unit, subject to the satisfaction or waiver of certain conditions.
- H. See Section 3.01(e) Items W and X.